

**§ 222.85**

appropriate public education to those children, as submitted to the Secretary pursuant to § 222.83(b). The remainder is the amount that the LEA is eligible to receive under section 8003(g).

(b) If the total of the amounts for all eligible LEAs determined in paragraph (a) of this section is equal to or less than the amount of funds available for payment as determined in § 222.82, the Secretary provides each eligible LEA with the entire amount that it is eligible to receive, as determined in paragraph (a) of this section.

(c) If the total of the amounts for all eligible LEAs determined in paragraph (a) of this section exceeds the amount of funds available for payment as determined in § 222.82, the Secretary ratably reduces payments under section 8003(g) to eligible LEAs.

(d) If the total of the amounts for all eligible LEAs determined in paragraph (a) of this section is less than the amount of funds available for payment as determined in § 222.82, the Secretary pays the remaining amount to LEAs under section 8003(d). An LEA that receives such a payment shall use the funds for expenditures in accordance with the requirements of section 8003(d) and subpart D of this part.

(Authority: 20 U.S.C. 7703 (d) and (g))

**§ 222.85 How may a local educational agency use funds that it receives under section 8003(g)?**

An LEA that receives a payment under section 8003(g) of the Act shall use the funds for reimbursement of costs reported in the application that it submitted to the Secretary under § 222.83(b).

(Authority: 20 U.S.C. 7703(g)(2))

**Subpart G—Special Provisions for Local Educational Agencies That Claim Children Residing on Indian Lands**

**GENERAL**

**§ 222.90 What definitions apply to this subpart?**

In addition to the definitions in § 222.2, the following definitions apply to this subpart:

*Indian children* means children residing on Indian lands who are recognized by an Indian tribe as being affiliated with that tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 20 U.S.C. 7713, 7881, 7938, 8801)

**§ 222.91 What requirements must a local educational agency meet to receive a payment under section 8003 of the Act for children residing on Indian lands?**

To receive a payment under section 8003 of the Act for children residing on Indian lands, a local educational agency (LEA) must—

(a) Meet the application and eligibility requirements in section 8003 and subparts A and C of these regulations;

(b) Develop and implement policies and procedures in accordance with the provisions of section 8004(a) of the Act; and

(c) Include in its application for payments under section 8003—

(1) An assurance that the LEA established these policies and procedures in consultation with and based on information from tribal officials and parents of those children residing on Indian lands who are Indian children; and

(2) A copy of the policies and procedures or documentation that the LEA has received a waiver in accordance with the provisions of section 8004(c).

(Authority: 20 U.S.C. 7703(a), 7704(a), (c), and (d)(2))

**§ 222.92 What additional statutes and regulations apply to this subpart?**

(a) The following statutes and regulations apply to LEAs that claim children residing on Indian lands for payments under section 8003:

(1) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*, unless otherwise noted.

(2) Other relevant regulations in this part.

(b) The following statutes, rules, and regulations do not apply to any hearing proceedings under this subpart:

- (1) Administrative Procedure Act.
- (2) Federal Rules of Civil Procedure.
- (3) Federal Rules of Evidence.
- (4) GEPA, part E.
- (5) 34 CFR part 81.

(Authority: 20 U.S.C. 1221 *et seq.* unless otherwise noted, 7703, and 7704)

#### § 222.93 [Reserved]

#### INDIAN POLICIES AND PROCEDURES

#### § 222.94 What provisions must be included in a local educational agency's Indian policies and procedures?

(a) An LEA's Indian policies and procedures (IPPs) must include a description of the specific procedures for how the LEA will—

- (1) Give the tribal officials and parents of Indian children an opportunity to comment on whether Indian children participate on an equal basis with non-Indian children in the education programs and activities provided by the LEA;
- (2) Assess the extent to which Indian children participate on an equal basis with non-Indian children served by the LEA;
- (3) Modify, if necessary, its education program to ensure that Indian children participate on an equal basis with non-Indian children served by the LEA;
- (4) Disseminate relevant applications, evaluations, program plans and information related to the education programs of the LEA in sufficient time to allow the tribes and parents of Indian children an opportunity to review the materials and make recommendations on the needs of the Indian children and how the LEA may help those children realize the benefits of the LEA's education programs and activities;
- (5) Gather information concerning Indian views, including those regarding the frequency, location, and time of meetings;
- (6) Notify the Indian parents and tribes of the locations and times of meetings;
- (7) Consult and involve tribal officials and parents of Indian children in the planning and development of the

LEA's education programs and activities; and

(8) Modify the IPPs if necessary, based upon the results of any assessment described in paragraph (b) of this section.

(b) Tribes and parents of Indian children may assess the effectiveness of their input regarding the participation of Indian children in the LEA's education programs and activities and the development and implementation of the IPPs, and share the results of that assessment with the LEA.

(Authority: 20 U.S.C. 7704)

#### § 222.95 How are Indian policies and procedures reviewed to ensure compliance with the requirements in section 8004(a) of the Act?

(a) The Director of the Impact Aid Program (Director) periodically reviews applicant LEAs' IPPs to ensure that they comply with the provisions of section 8004(a) and § 222.94.

(b) If the Director determines either that the LEA's IPPs do not comply with the minimum standards of section 8004(a), or that the IPPs have not been implemented in accordance with § 222.94, the Director provides the LEA with written notification of the deficiencies related to its IPPs and requires that the LEA take appropriate action.

(c) An LEA shall make the necessary changes within 60 days of receipt of written notification from the Director.

(d) If the LEA fails to make the necessary adjustments or changes within the prescribed period of time, the Director may withhold all payments that the LEA is eligible to receive under section 8003.

(e) Each LEA that has developed IPPs shall review those IPPs annually to ensure that they—

- (1) Comply with the provisions in section 8004(a); and
- (2) Are implemented by the LEA in accordance with § 222.94.

(f) If an LEA determines that its IPPs do not meet the requirements in paragraphs (e) (1) and (2) of this section, the LEA shall amend its IPPs to conform with those requirements within 60 days of its determination.